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STUDENT NOTES

THE DEPLETION DEDUCTION AS APPLIED TO STRIP MINING

Since its inception in 1913,¹ the depletion deduction has been the subject of much litigation, not all of which has helped to clarify the application of the statutes.² By far the greater part of the case law on the subject concerns oil and gas, but perhaps that can be explained on the basis of the applicable depletion percentage, 27½%.³ However, the same basic principles apply in those cases as in mining and such decisions have been cited interchangeably by the courts.⁴

The original purpose of the deduction was to return to the taxpayer the capital that is exhausted by production of the natural resource,⁵ but this view does not now prevail as to percentage de-

¹ Tariff Act of 1913, 38 STAT. 114.

² MERTENS, FEDERAL INCOME TAXATION § 24.21 (1954 ed.) (hereinafter cited as MERTENS).

³ INT. REV. CODE OF 1954, § 613(b)(1) (hereinafter cited as 1954 CODE). For a discussion of the justification (or lack of same) for this rate, see Baker and Griswold, *Percentage Depletion—A Correspondence*, 64 HARV. L. REV. 361 (1951).

⁴ *Eastern Coal Corp. v. Yoke*, 67 F. Supp. 166 (N.D.W. Va. 1946); G.C.M. 26290, 1950-1 CUM. BULL. 42.

⁵ Austin, *Percentage Depletions: Its Background and Legislative History*, 21 U. KAN. CITY L. REV. 31 (1952).